

MINUTES

TOWN OF POLK, WASHINGTON COUNTY  
BOARD OF ZONING APPEALS

THURSDAY, JUNE 23, 2016 6:30PM

I. **Meeting was called to Order** at Polk Town Hall, 3680 State HWY 60, Slinger, Wisconsin by Secretary Groth. With the absence of Chairman Patrick Fehring, Groth asked for nominations for Chairman of the June 23, 2016 meeting of the Zoning Board of Appeals. Karen Reiter nominated Marilyn Mayer. Marilyn Mayer indicated she accepted the nomination to Chair the hearing.

A. **Secretary Groth read the Meeting Notification.** The meeting was posted at Polk Town Hall, Roskopf RV Center, and Cedar Lake Hills bulletin boards. Copied to Hartford Times Press, Milwaukee Journal, West Bend News, WBKV, WTKM, Interested Parties were notified

B. **Roll Call:** Present were Marilyn Mayer, Karen Reiter, Mary Franz, Rodney Bartlow, Alternate Robert Anderson. Absent: Patrick Fehring.

C. **Approval of Agenda:** Karen Reiter moved to approve the Agenda. Mary Franz seconded the motion. All voted in favor and the motion carried.

D. **Approval of Minutes of the April 28, 2016** hearing: Karen Reiter moved to approve the Minutes as presented. Rodney Bartlow seconded the motion. All voted in favor and the motion carried.

E. **Announcement of Proceedings** was read by Chairman Mayer.

II. **Public Hearing: Brian and Jennifer Weis** 1202 Kerechun Road, Hubertus, WI 53033

A. **Variance requests to Section 6.04(2) of the Zoning Ordinance, Title X of the Municipal Code of the Town of Polk to allow a variance of 37 feet and 8 inches to the minimum front yard setback of 50 feet; a 6 foot variance to the south side yard setback minimum of 15 feet; and a north side yard setback of 7 feet and 5 inches to the minimum side yard setback of 15 feet; and a variance of 5.33% to Open Space requirements to construct a single family residence on a substandard lot in the R-1 Single Family Residential District. Property described as: Tax Key T9-0141. Section 5, Town 10, Range 19, Town of Polk, Washington County, Wisconsin. Zoned R-1 Single Family Residential District. Address 4735 Fontana Beach Road. Brian and Jennifer Weis, property owner, Shane Pionkowski, Agent for the Property Owner.**

The applicant was invited to present to the Board. Brian Weis, property owner, addressed the Board. Their home flooded due to busted pipes over last winter. The home is not repairable according to their contractor. Mary Franz asked the applicant to describe their intentions with the variance. Weis stated they intend to build a new home in a similar footprint as their previous home. The new home would be about 5 feet` wider. They also want to add an attached garage. A private road bisects their property and they would like to have the garage on the "home side" of the lot. The existing garage will stay for now. Karen Reiter commented that most of the homes on that part of the lake have 50 foot wide lots, and the applicant's lot is a 60 foot wide lot. Also, the home will be 60 feet long including the garage. Reiter added there does not appear to be enough room to even back out of the garage without going into the street [before completely exiting the garage].

Shane Pionkowski, owner of Highland Builders, stated the parcel has limitations being located off Fontana Beach Road. The goal is to construct a full time residence (the current home is a summer cottage) with an attached two car garage. Other goals are to keep within the footprint of the existing home as much as possible while maintaining the 75 foot setback to the lake, and to minimize all infractions. The County [Washington County Land Use] has approved the proposals. Other properties

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on Fontana Beach Road have similar driveways close to the road. We are increasing parking on the parcel.

The septic will go from a holding tank to septic system pumped across the street. We are raising the house to be more level with the road.

Reiter stated she feels the applicant is asking too much. Rodney Bartlow asked if other, more compact designs had been considered to minimize the nonconformity. Shane stated that in designing the home they looked at keeping the home as compact as possible. For example, the garage depth is 22 feet, which is smaller than average. Reiter commented, "You have three levels of living space". Pionkowski commented, to build up the home to make for a more level drive into the garage, an exposed basement was created that will be finished out at a later time. Mayer stated concerns that the stairway was an infraction.

Pionkowski stated they were trying to appease the County and Township, but "I can't go beyond the 75' [setback to lake] without averaging and to stay within the current deck structure. The County will allow building into the current footprint of the deck. And allow stairs outside of structure to access the lake." Mayer asked if the stairs could be run straight down. Pionkowski: The County doesn't want the stairs closer to the lake. Reiter: "You are 7.5 feet from the lot line. Why can't you get the stairs closer to the home? Most homes on this lake are working within 10 feet of the lot line. You have a wider lot than most and are trying to get closer ~~that~~ than that [setbacks]". Mary Franz: How many square feet is the home? Pionkowski answered 3,000 square feet on the first and second floor. Because we are raising the elevation of the house, the deck will be raised necessitating a longer stairway. Mayer commented, "You are creating your own hardship. You have a 60 foot lot, those lots, especially to your north, are 50 feet and they have done very well building a year round home on those lots. You have an extra ten feet to work with. You are stretching". There was discussion as how to reduce the encroachment of the deck stairway for the 12 foot by 20 twenty foot deck. Building Inspector John Frey stated the deck could be designed to eliminate the stairway encroachment. Or the deck could be eliminated altogether and push the house back twelve feet toward the lake and increase the street yard setback. Frey strongly recommends that driveways have a length of at least 20 feet for safety reasons and that this may be a case of trying to build too large of a home on too small of a lot. Pionkowski: We tried to minimize infractions and looked at what other people had done in the area. There are some driveways that are short. We think that the driveway will allow someone to pull out enough to look to see if there is oncoming traffic and then pull out into the road. Reiter: There is an incline at your driveway. Rodney Bartlow commented he doesn't like it, but there seems to be new homes with short driveways. Franz noted that it is not uncommon to have a garage across the driveway on Fontana Beach. There was discussion relative to eliminating the attached garage. Pionkowski stated neighbors commented that coming across the road in the winter is dangerous and that an attached garage is preferred. Bartlow noted the Board had previously granted a variance 4774 Fontana Beach with a similar setback request but added that no parking was allowed perpendicular to the house. Secretary Groth commented that those type of restrictions placed with a variance are not easily enforced. Building Inspector John Frey stated he is not in favor of the plan as presented. He recommends denial. "They are asking for too much".

Mayer invited other public comment. Neighbor to the south, Kari Neville, 4731 Fontana Beach Road,

commented that a previous variance with a home on Fontana Beach had a short driveway, but the lot had a steep incline and the property owner did not own property on the opposite side of road. There is a tight connection between lot lines making it difficult to get in between homes to do lake side construction and repair without encroaching on neighboring property. We think the home is large for the size of the lot. Making the home smaller will leave more green space. The request is asking for variances on every side of the parcel. Our view [of the lake] would be compromised if they push the house back. We oppose your Building Inspector's suggestion to move the house toward the lake.

Bartlow stated concerns about the amount of impervious space and asked if any impervious surface counts against the 80 percent open space and asked the applicant if they would be raising the buildings on the opposite side of the road. Weis stated that the buildings would stay for now. He also noted that at least five houses to the south have shorter driveways than what we propose. Franz commented there are numerous challenges on Fontana Beach road with regard to ingress and egress and fire safety concerns. "There are tight quarters on that road".

Chairman Mayer closed the Public Hearing.

## **B. Consideration of Variance Request**

Mayer invited comment from the Board.

Reiter: They have the right to have a home. But this home is 4000 square feet located on a 60 foot wide lot. We must be in accordance with Title X. The hardship here is self-imposed.

Franz: The applicant is asking for more than we can provide for exception. They have no particularly unusual circumstances.

Bartlow: They haven't shown exceptional circumstances for this request.

Anderson: There are adjustments that can be made to make this work.

The Board went to their findings:

Preservation of Intent: Single family dwellings are a permitted use in the district.

Exceptional Circumstances: The applicant has an existing substandard lot, but [requests] must be within the guidelines of Title X.

Economic Hardship and Self-Imposed Hardship Not Grounds for Variance: Hardship is self-imposed by the choices made in the design of this house.

Preservation of Property Rights: While the applicant is allowed to have a home on the parcel, they should compromise on size of the home.

Absence of Detriment: The request is contrary to purpose and intent of Title X.

Rodney Bartlow proposed tabling the request to allow the applicant the opportunity to edit their home design and reduce and eliminate non-conformities. There was discussion as to what redesigns might be acceptable to the Board. The applicant agreed to meet with the Building Inspector to discuss design modifications that may be more acceptable to the Board. Rodney Bartlow moved to table the variance request until the next month. Mary Franz seconded the motion. All voted in favor and the motion carried.

III. **Public Hearing: Robert and Sherrie Michalski, 3781 Hickory Lane, West Bend, WI 53095**

**A. Variance Request to Section 3.05(3) of the Zoning Ordinance, Title X of the Municipal Code of the Town of Polk to allow a variance of twenty feet (20') to the minimum side yard setback of thirty feet (30') from the property line on a R-1 Single Family District parcel to build a detached garage. Property is described as: Tax Key#T9-0051. Section 3. Town 10 North. Range 19 East, Town of Polk, Washington County, Wisconsin. Zoned A-1 General Agricultural District. Address, 3781 Hickory Lane. Robert and Sherrie Michalski, Property Owners.**

Secretary Groth read the Variance Request. Robert Michalski stated his existing garage is only 19 feet deep and he cannot park two vehicles in it. Their parcel is on a dead end road surrounded by trees. No one can see their house. His neighbors are okay with what he is proposing. The garage will match the house and it will be constructed to make it look nice from the road. The garage will have the same siding, roof, and doors that match the house. A 22 foot depth for a garage is typical. Theirs is smaller.

Mayer invited comments and questions from the Board.

Karen Reiter: You could go back toward the nice trees and move the garage over to meet the setbacks. A ten foot setback from the property line is pushing it.

Michalski: The proposed location is the best location because of where the driveway is located. The garage can't be seen by my neighbors. My hardship is my small garage. We can only fit one vehicle in the garage.

Reiter: Total [number of] cars is not a hardship.

Bartlow: We understand that the current neighbors are okay with your project, but the ordinance ensures some separation of neighbors. They could sell the home. There are no exceptional circumstances. This is a flat property with open space. There are plenty of locations on the parcel to build this garage.

Michalski: The further back you push the garage, the more excavation is necessary.

Franz: With the eave overhang, the roof is 8 feet off the property line. The turnaround does lend itself to the locating of the garage, but we can't consider the aesthetics.

John Frey: Have you considered building an attached garage? Attached garages will enhance the principal structure. Detached garages do not enhance the appearance of the home. You will only be building three walls. It's not as expensive as you might think.

Michalski: An attached garage is too expensive. If I place the building further into the back yard, it will block my view from the backyard patio and from the kitchen window.

Mayer: Could you move the garage further off the lot line?

Secretary Groth: There must be 10 feet eave to eave fire separation from the home.

Michalski: If I move it over, it will be too close to the patio.

Frey: Are there other locations on this lot where this garage could be built within the setbacks? Why is the Board considering this if it can be built elsewhere?

Franz: You have to prove a reason for the granting of the variance. You have to come to the Board with the understanding that what you are asking for is unacceptable. You have to be able to justify the variance to achieve what you are requesting. If your request is not consistent with the options that exist on your property, we cannot comply. We have to be consistent.

Michalski: We think future potential buyers won't like having the garage in the backyard. The driveway and garage were not built by us. Chairman Mayer closed Public Comment

**B. Consideration of Variance Request**

Preservation of Intent: *Accessory structures are an allowed use in the district.*

Exceptional Circumstances: *There are no exceptional circumstances with this 1.5 acre lot.*

Economic Hardship and Self-Imposed Hardship Not Grounds for Variance: *Change in views from the home and patio and the cost to construct an attached garage not grounds for variance.*

Preservation of Property Rights: *The applicant has adequate space on the parcel to build a garage within the required setbacks.*

Absence of Detriment: *There is no detriment.*

Mayer asked the Board if it wanted to provide an opportunity to the applicant to come back with a new plan. Bartlow commented that if there is adequate area to build the garage in the setbacks, the application should be denied. Bartlow moved to deny the variance. Robert Anderson seconded the motion. All voted in favor and the motion to deny the variance was passed.

**IV. Public Hearing: Randall and Peggy Krebs, 4871 Rolling Hills Road, Hartford, WI 53027**

**A. Variance request to Section 3.05(3) of the Zoning Ordinance, Title X of the Municipal Code of the Town of Polk to allow a variance of 1,030 square feet to the minimum lot size of 60,000 square feet to create a parcel in the R-1 Residential District. Property described as Tax Key # T9-0311-001. Section 6. Town 10 Range 19. Zoned R-1 Single Family Residential. Address 4871 Rolling Hills Road, Town of Polk, Washington County, Wisconsin. Randall and Peggy Krebs, Property Owners.**

Secretary Groth read the Variance Request.

Randy Krebs addressed the Board: Our parcel is just short of the 1.5 acres needed for a lot division. We want to split the lot to build a future retirement home. We like the area, like our neighbors and want to stay here. We would like to make better use of the vacant portion of the lot.

Rodney Bartlow: When did you buy the home?

Krebs: We bought the home in 1992. The gentleman who sold me the property tried to divide it before he sold it to me. The Town would not allow the lot to be divided, so I ended up with both of the lots [that the previous owner was attempting to create]. We built the house.

John Frey: Based on the size, shape, and location of the lot, and the size of the adjoining lots, it makes perfect sense that it be divided into two lots; and I strongly recommend approval of the variance.

Mary Franz: I am wondering how the neighbors lots were created in the size of .86 acre.

Secretary Groth: When they were created in 1959, they were conforming.

Karen Reiter: When CSM 35 was created, there must have been different requirements.

Frey: The small lots across the road may have been created by Plat of Survey through the State.

Groth read into record an email received by a neighboring property owner, Jerry and Jean Oppermann, in opposition to the request.[Attached to the Minutes]

Ray Bednar, 4833 Rolling Hills Drive, spoke in favor of the request especially given the small amount of square

feet needed to create the new lot.

Mike Anderson a neighbor on Rolling Hills lives east of proposed lots. He stated that he enjoyed the woods across the street. If the property falls into other hands, they may not be as willing to keep the trees as Randy Krebs. He also noted that the Oppermann's have 25 feet of tree line on their property adjoining the Krebs property.

Albert Schulteis, Chair of Town of Polk Plan Commission addressed the Board. I understand how the Ordinance reads, but lots were put in at .86 of an acre and this lot is way above that. Schulteis expressed his appreciation of the Board and the hard decisions they must make. Although he is in favor of the division, he understands the Boards position. The Chairman closed the Public Hearing.

**B. Consideration of Variance Request:**

Bartlow: In looking at the Minutes from the decision of the ZBA in 1991, we are facing the same issues. The Zoning Board handbook written by UW Stevens Point, prohibits new applications seeking the same relief unless a substantial change in circumstances. Mayer noted that she was late to that meeting 1991. Bartlow stated that he didn't want to open a door where people think they can change a few facts and get a new hearing. Are there substantially differently circumstances here?

Groth: The 1991 request was to create two non-conforming lots. This application is to create one non-conforming lot.

Frey: In my opinion, that is a substantial difference.

Reiter: At the seminars I have attended, we are told never make a conforming parcel nonconforming. In 1959 those parcels east of the road went to the center of the road; now only Agricultural [lots] go to the center. If these lots could apply center of the road to the lot area, we wouldn't be here.

Frey: I agree. Also, if the front lot could be taken to center line of County Road K. The two lots created by this division would be significantly larger than parcels along the east.

Mayer: Rob's concern is that this is a different request.

Bartlow: I want on record that this Board believes this is a different request with significantly different circumstances.

Mayer: Your point is well taken. I believe this is a new request with new circumstances.

The Board went to their findings:

Preservation of Intent: *The request is within the spirit and intent of Title X.*

Exceptional Circumstances: *The lot was developed before the current Ordinances and was divisible when created.*

Economic Hardship and Self-Imposed Hardship Not Grounds for Variance: *There is no self-imposed hardship.*

Preservation of Property Rights: *The resulting lots with this division will be larger than lots in the general vicinity.*

Absence of Detriment: *There is no detriment.*

Mary Franz: To me, this is compatible with the general layout of the subdivision and as to the creation of the long narrow lot at that time, makes it less saleable. It [variance] seems appropriate given the lot sizes in the area.

Mary Franz moved to approve the variance. Rodney Bartlow seconded the motion.

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There was a call for a roll call vote.

Bartlow: Aye  
Anderson: Aye  
Reiter: Nay  
Franz: Aye  
Mayer: Aye

The required votes were in favor of the motion and the variance was approved.

**IV. Adjournment**

Rodney Bartlow moved to adjourn the hearing. Karen Reiter seconded the Motion. All voted in favor and the Motion carried. The hearing adjourned at 8:10PM

Respectfully submitted,

Tracy Groth  
Zoning Secretary